

**STATE OF WEST VIRGINIA
WEST VIRGINIA SECURITIES COMMISSION
BEFORE THE SECURITIES COMMISSIONER
CHARLESTON, WEST VIRGINIA 25305**

ORDER NO. 99-1236

**ORDER RESTRICTING CERTAIN INVESTMENT ADVISER
AND LIMITED CAPACITY INVESTMENT ADVISER
REPRESENTATIVE REGISTRATIONS AND ADOPTING
STANDARDS FOR GRANTING WAIVERS OF EXAMINATIONS
(13.01)**

Pursuant to the authority granted to him by Chapter 32, of the West Virginia Code, 1931, as amended ("the West Virginia Uniform Securities Act"), hereinafter sometimes referred to as the "Act", and particularly Chapter 32, Article 4, Section 412 of the Act, the Commissioner of Securities ("Commissioner") has reviewed the enactment of House Bill 2842 (the "Bill") which was passed by the West Virginia Legislature during its 1997 legislative session.

Pursuant to said review, the Commissioner is of the opinion and finds as follows:

Findings of Fact

1. The Bill in part, defines Investment Adviser Representative which includes any person who "solicits, offers or negotiates for the sale of investment advisory services", as provided for in Chapter 32, Article 4, Section 401(h)(4).
2. The Act and Administrative Regulations currently do not set restrictions on or standards for applicants who are granted waivers of examinations based upon the limited nature of the proposed business activity.
3. The Act currently does not require an applicant to be qualified to engage in the securities business in the State of the applicant's principal place of business.

4. This Order is necessary and appropriate in the public interest, for the protection of investors and to achieve maximum uniformity.

Conclusions of Law

5. Chapter 32, Article 4, Section 412(a) of the Act provides that the Commissioner may from time to time make orders as necessary to carry out the provisions of the Act.

6. This Order is consistent with the purposes fairly intended by the policies and provisions of the Act as required in Chapter 32, Article 4, Section 412(b) of the Act.

7. The Administrative Regulation, specifically 13.01 (3), is sufficiently broad to allow the Commissioner flexibility to adopt standards and to conditionally restrict registrations.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

8. The Commissioner may grant a waiver from testing requirements for Limited Capacity Investment Adviser Representative in conjunction for which registration is sought, the applicant appears to be qualified to transact business in this State, so that investor protection should not require the examination otherwise imposed by Administrative Regulation 13.01 (2).

9. A Limited Capacity Investment Adviser Representative applicant who is granted an examination waiver based upon the limited nature of the proposed business activity, to solicit, offer or negotiate for the sale of investment advisory services the authority to perform such as prescribed in Chapter 32, Article 4, Section 401(h)(4), **shall be conditionally restricted** and shall only function within the limited capacity to solicit, offer or negotiate for the sale of investment advisory services and possesses no other capability of Investment Adviser Representative as defined in Chapter 32, Article 4, Section 401(h).

10. The Commissioner may consider the grant of a waiver upon written request. The written request must provide full and complete disclosure and be attested to by the individual for whom the waiver is requested. Copies of a schedule D, schedule F (continuation sheet for form ADV Part II) or both must accompany the written request.

- A. A request for waiver shall explicitly detail and provide documentation for each of the following: (A) education; (B) employment history; (C) nature of investment advisory business activity; and (D) former and current professional licensing, if any, if held by applicant.
- B. Business referral arrangements including fee or commission agreements between the Limited Capacity Investment Adviser Representative and the Investment Adviser shall be provided to the Commissioner. Disclosure of referral arrangements must state; (1) policies and procedures for supervision of the Limited Capacity Investment Adviser Representative, (2) bonding and liability obligation of the Investment Adviser for the business conduct of the Limited Capacity Investment Adviser Representative, and (3) disclosure of fee's or commissions receivable by the Limited Capacity Investment Adviser Representative for making a referral. A copy of the above three (3) disclosure requirements must also be provided to the customer upon solicitation of the referral. Certification of delivery of requirements must be provided by client prior to entering into a contract for advisory services and copies must be retained by the Limited Capacity Investment Adviser Representative, Investment Adviser and client.
- C. The Limited Capacity Investment Adviser Representative shall file with the Commissioner, any change in the business referral arrangement, between of the Limited Capacity Investment Adviser Representative with the Investment Adviser. Conditionally restricted registration of the Limited Capacity Investment Adviser Representative may be suspended per Chapter 32, Article 2, Section 204,

due to substantive changes in the business referral arrangement.

11. All granted examination waivers, which are held by conditionally restricted Limited Capacity Investment Adviser Representatives shall expire on December 31st of each year. The registrant's annual renewal for registration which had previously been granted a waiver from examination, shall include a new and current waiver request. The Commissioner will determine annually, if the examination waiver request will be granted.

12. An initial and renewal examination waiver request shall only be considered after all applicable forms and fees have been filed with the commissioner.

13. No waiver will be considered, except upon written application and the granting of such shall be at the discretion of the Commissioner.

14. An applicant must be registered or qualified to engage in the securities business in the State of the applicant's principal place of business.

15. Nothing in this order shall be construed to affect the activities of any Broker/Dealer, Investment Adviser, Agent and Investment Adviser Representative engaged in business in this State that is not subject to the jurisdiction of the Commissioner as a result of the National Securities Markets Improvements Act of 1996, as amended.

16. This order shall remain in effect until modified or vacated by the Commissioner.

Entered this 29th day of March, 1999.

Glen B. Gainer, III
Commissioner of Securities

By: Barbara Harmon-Schamberger
Deputy Commissioner of Securities